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Libertarianism without inequality or inconsistency: a critical examination of Peter Vallentyne and Michael Otsuka

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Having your cake and eating it too

An English proverb states that 'you cannot have your cake and eat it (too)'.¹ This idiom encapsulates the view of the majority of scholars² on the topic of self-ownership and equality. These two philosophical ideals are generally judged to be at logger-heads, mutually excluding each other. This conflict is essentially between equality of rights, and equality of condition (Raz, 2009). Whilst self-ownership focuses on individual liberty, equality of situation requires an interference with the rights of individuals. Right Libertarians generally view equality as an unwanted and un-needed pattern. Conversely, liberal egalitarians such as Dworkin have rejected self-ownership as 'vague' (Dworkin, 1981). Left-libertarians however (with varying degrees of success) have undertaken the task of reconciling these two ideas. This thesis will focus upon the work of four philosophers: Robert Nozick, G.A Cohen, Michael Otsuka, and Peter Vallentyne. The first two of these writers represent the fundamental basis for left-libertarianism, whilst the second two offer contrasting approaches for solving the problems identified by the former.

The works that formed the inspiration for the left-libertarian reconciliation of self-ownership and equality will be set out. This was both as a reaction against Robert Nozick, and a development upon G.A Cohen's arguments within *Self-ownership, Freedom and Equality*. The first section of this thesis is therefore dedicated to setting out (somewhat briefly) each of their views of Self-ownership and equality. Though, as will be made clear, while the pair differed on most issues, Cohen and Nozick agreed that a reconciliation of the two ideas was not readily attainable. The left-libertarian project was largely developed from Cohen, as questions and ideas raised opened up new areas of investigation.³ This thesis will set out options as to how self-ownership and equality can be

¹ This essentially means that you must choose between two mutually exclusive possible options: that of keeping the cake, and that of eating the cake.

² Right Libertarians (Nozick, Mack, Narveson) reject a reconciliation of self-ownership and equality, as do egalitarians (Rawls and Dworkin). Each side views the ideal that they prize too important to be limited by the other.

³ To name but one example, Cohen's idea of 'effective autonomy' which provided the foundation for Otsuka's 'robust' self-ownership

effectively brought together, without either being 'diluted' or rendered 'meaningless' as Fried suggests (Fried, 2004). The question then arises as to which of the plethora of potential left-libertarian options are most viable.

This thesis will focus upon two such attempts to reconcile self-ownership and equality: that of Peter Vallentyne, and that of Michael Otsuka. Although both authors view themselves as 'equal opportunity for welfare left-libertarians', there are nonetheless clear and significant difference between their conceptions of both self-ownership and equality. Contrasting these 2 divergent interpretations of self-ownership and equality will illustrate clearly which approach is more successful. This approach will therefore allow me to assess: Does left-libertarianism's, and in particular Michael Otsuka's and Peter Vallentyne's, reconciliation of self-ownership and equality offer a more convincing libertarian alternative to Robert Nozick's rebuttal of such a union in *Anarchy, State and Utopia*?

This thesis will argue that Michael Otsuka's reconciliation of self-ownership and equality represents the strongest left-libertarian case. More than this though, I will suggest that Otsuka's welfarist egalitarian approach is largely successful at reconciling what many have deemed irreconcilable. Vallentyne's approach on the other hand will be shown to have significant drawbacks. First, each authors definition of 'self-ownership' will be assessed and contrasted. Secondly, their approaches to redefining the Lockean proviso and initial acquisition of resources will be examined. Finally, the attempt that each has made to reconcile these two concepts together will be examined. The strength of Otsuka's approach will be highlighted by its contrast to the problems that exist within Vallentyne's attempt to bring self-ownership and equality together.

1 Robert Nozick on self-ownership and equality

*Anarchy, the State and Utopia*⁴ (1974) is widely considered to be Robert Nozick's magnum opus (citation). It is nonetheless important to understand that Nozick is not a 'paradigmatic right-Libertarian', since his proviso is deemed overly restrictive upon individuals rights (Risse, 2004, p. 340). I will focus upon the second part of the book: *Beyond the minimal state?* (Nozick, 1974, pp. 149-292) . Here Nozick rejects the idea that there can legitimately be a 'more than minimal state', and defends a Lockean account of self-ownership.⁵ The need to justify the legitimacy of authority is a consistent theme throughout the entire book. Throughout ASU Nozick talks regularly of 'justifiability, permissibility, and legitimacy', the main focus of the book is clearly justice (Vallentyne, 2011, p. 90)

That said, the word 'self-ownership' is only used once within ASU, and that is in the context of the 'classical liberals notion of self-ownership' (Nozick, 1974, p. 172). Whilst self-ownership has been readily identified as the core of Nozick's work⁶, its near complete absence within the text has inevitably led to diverging opinions as to the exact nature of Nozick's 'self-ownership'.

1.1 Entitlement Theory

For Nozick 'entitlement, not desert nor need should be decisive' in distributing property (Wolff, 1991, p. 9). Your rights to worldly things are as inviolable and comprehensive as your right to your two eyes (Wolff, 1991, p. 9). The 'entitlement theory' sets out Nozick's rules for justice in holdings, and therefore his conception of justice:

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding

⁴ *Anarchy, the State and Utopia* will henceforth be referred to under the acronym 'ASU'

⁵ This is not without contention

⁶ See G.A. Cohen , *Self-ownership, Freedom and Equality*, p1-18

2. A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding
3. No one is entitled to a holding except by (repeated) application of 1 and 2 (Nozick, 1974, p. 151)

This sets out how any person may justly attain rights over any property. Justice in acquisition (1) sets out the legitimate ways that previously unowned resources 'may come to be held' (Nozick, 1974, p. 150). The second part of Nozick's justice in holdings is that of justice in transfer (Nozick, 1974, p. 152). Here Nozick states that any person may justly hold property by transfer, so long as they have received it from someone who themselves acquired it legitimately. For Nozick: *A distribution is just if it arises from another just distribution by legitimate means* (Nozick, 1974, p. 151). So long as each individual is entitled to the land that they hold, that the distribution is just (Nozick, 1974, p. 151).

To safeguard against any potential injustices within the system, the third principle is one of rectification. Impermissible modes of transfer are required to be rectified. However in terms of practicality Nozick himself is unsure exactly how far back one should go to rectify the 'slate of injustices' (Nozick, 1974, p. 151).

1.2 Self-ownership

Nozick's self-ownership utilises Kant's formula of humanity from the groundwork. It can never be justified to force any individual actor into assisting another member of society, as this would entail treating him as a 'means' rather than an 'end' in himself. No-one may be compelled to do anything that might reduce their own quality of life, regardless of the potential benefits to others. Taxation for the purposes of redistribution thus qualifies as 'forced labour' and is therefore morally indefensible (Wolff, 1991, p. 11).

This independence is to the extent that individuals can justly reduce the capabilities of others. Nozick uses an example of a world with 26 people (a-z). Each appropriates resources in turn. By the time

that Y has appropriated resources, there are insufficient resources left for Z to sustain himself. This distribution of resources does not apparently impede Z's rights of self-ownership. So long as each of the others attained their resources justly, then the ensuing distribution is just. Self-ownership is therefore supposedly unaffected by a lack of property or resources.

Justification for intervention in the life of an individual comes when someone directly intervenes with him or his property: the 'Incursion model' (Otsuka, 1998b, p. 153). Self-ownership is therefore only restricted when one's property or person are physically restricted. The absence of property therefore, and the need to work for someone who owns resources is not a restriction of self-ownership within this definition. Nozick focuses on direct actions against property rights, rather than indirect action by others that will have an inevitable consequence on an individual.

1.3 Lockean Proviso

Eric Mack points out that the Lockean Proviso is more of an after-thought on the part of Nozick (Mack, 2009); it is a way of getting around the problems faced by radical right libertarians such as Murray Rothbard. Nozick's theory of justice works within a version of the 'Lockean Proviso' found within John Locke's *Second Treatise of Government*. Nozick adopts '*enough and as good left for others*' as the fundamental element of his own Lockean proviso. The world is assumed to be initially unowned, with no property claims. From this start-point, the Lockean proviso acts as a restriction upon the extent to which property may be appropriated justly. Nozick's interpretation of this proviso works on the basis that others cannot be made worse off by appropriation. Thus one cannot 'appropriate the only watering hole in a desert and charge what he will' (Nozick, 1974, p. 180). Nozick only views the proviso as being applicable where 'the position of others no longer at liberty to use the thing is thereby worsened' (Nozick, 1974, p. 178). Certain aspects are not covered within his proviso. For example, worsening opportunities for others to appropriate resources is not a justifiable reason (Nozick, 1974, p. 178).

1.4 Patterns

Nozick believes that equality undermines self-ownership. Liberty upsets patterns and so patterns should be rejected. Nozick's view of patterns can be simplified thus:

- 1) liberty upsets patterns
- 2) equality requires patterns
- 3) ∴ liberty and equality are incompatible
- 4) equality is essential
- 5) ∴ patterns should be disregarded in favour of liberty

(1) In order to maintain equality within any society, 'one must either continually interfere to stop people from transferring resources as they wish to, or continually interfere to take from some persons resources that others for some reason chose to transfer to them' (Nozick, 1974, p. 160). Here Nozick invokes his famous Wilt Chamberlain example.⁷ He questions whether this new distribution of resources could be unjust, given that all participating parties acted freely. Each actor has the power to use their resources however they saw fit, and the new distribution arises from a previously just distribution by just means. Equality would not permit such accumulation of wealth on the part of Wilt Chamberlain, even though it is just. (2) For the pattern of equality to be maintained Wilt's resources need to be continually interfered with and redistributed to others. A distributional pattern with 'any egalitarian component is overturnable by the voluntary actions of individual persons over time' (Nozick, 1974, p. 164). (3) The Wilt Chamberlain example makes it clear that equality is incompatible with self-ownership, and (4) Nozick, as a libertarian, believes that self-ownership is essential. (5) This therefore leads to the logical conclusion that equality must be rejected (Nozick, 1974). All forms of distributive justice that require patterns must likewise be rejected.

⁷ In a proposed socialist egalitarian society with an equal distribution of resources, each individual then has the opportunity to pay 25 cents to watch Wilt Chamberlain play basketball. If during a season 1 million people pay to watch Wilt play, then he will have made \$250,000. The total distribution of resources will therefore now be distinctly unequal, with Wilt possessing much more than the average person.

1.5 Value of Nozick

Robert Nozick put together a strong defense of self-ownership and rejection of egalitarianism. The entitlement theory is largely a response to Rawls' difference principle and principles of justice. He comprehensively rejects the egalitarianism prevalent within *A Theory of Justice* in favour of self-ownership. Thomas Nagel argued that ASU was without foundations, since Nozick simply assumes that people have extensive rights against any coercive interference (Feser, 2014). This thesis will not address the validity of this critique. Even if this were to be accepted as correct, a new argument does not necessarily need to be generally accepted as correct in order to be of value. It can, as I will argue is the case with ASU, be often erroneous, but be thought provoking, and opens up philosophically interesting areas, just as Descartes' *meditations* did (Feser, 2014). The reaction that ASU provoked from the likes of Cohen and left-libertarians illustrates its value to philosophical thought, even if it were deemed 'baseless'.

2 G.A. Cohen's critique of Nozick

G.A. Cohen's *Self-Ownership, Freedom and Equality*⁸ constituted an assault upon Nozick's conception of self-ownership within ASU (Cohen, 1995). In contrast to writers such as Kant who view self-ownership as incoherent, and Dworkin who views it as overly vague, Cohen accepts the strength of the argument (Cohen, 1995, p. 17). For Cohen, a full self-owner 'possesses over himself, as a matter of moral right, all those rights that a slaveholder has over a complete chattel slave as a matter of legal right' (Cohen, 1995, p. 68). Cohen challenged several of Nozick's arguments, but for him this represented only a weakening of the self-ownership thesis, which could not be entirely refuted (Cohen, 1995). This proves a problem for Marxists, who, in their desire for material equality would be best served by a straight rejection of the self-ownership thesis. More than this though, Cohen makes it clear that a key element of Marxist critique of capitalism is based upon the self-ownership

⁸ *Self-Ownership, Freedom and Equality* will henceforth be referred to as 'SFE'

principle⁹. The genius of Cohen's work is seemingly more in its critique, than in offering any alternative workable conception (Chodos, 2009).

Cohen approaches the self-ownership and equality debate from a very different viewpoint than Nozick. An 'analytical Marxist', for Cohen 'socialism was superior to capitalism from any morally decent point of view' (Cohen, 1995). Jan Narveson suggests that Cohen simply assumes the value of equality, without providing a proper defence (Narveson, 1997, p. 2)¹⁰. Such criticisms somewhat miss the point of *SFE*. Cohen does not attempt a defense of equality that has been so strongly defended by others, and to take this defense as a starting point for assessing self-ownership is not a sign of weakness. Much like Cohen in *SFE*, this thesis will assume that there is value in equality. This debate cannot however be addressed in detail. Whilst setting out Cohen's complex arguments fully would be an impossible task within this essay, his main refutations of Nozickian self-ownership theory, and its implications for the reconciliation of self-ownership and equality will be detailed below. Although Cohen is unable to formulate a workable link between the two concepts, he differs from Nozick in that he does believe it to be possible (and beneficial!).

2.1 Effective Autonomy

A major criticism of Nozick within *SFE* is in Cohen's explanation of how the self-ownership thesis fails to work effectively with regard to autonomy. Although Nozick regards his self-ownership as 'full', this is shown to be often at the expense of 'effective autonomy' (Cohen, 1995). As mentioned previously, Nozick utilizes an analogy where 'z' is left without any capacity to appropriate resources. If 'z' is unable to attain the necessary resources to survive, or is forced to work for another, then his autonomy is restricted. His freedom and liberty to act is restricted to the extent that his 'full' self-ownership is somewhat meaningless. Cohen therefore poses the challenge that either self-

⁹ The capitalist exploitation of workers centres upon the removal of the personal property of the workers by capitalists. Self-ownership, and the idea that adding value to a product through labour grants ownership must therefore be embedded within Marxist philosophy.

¹⁰ Raz (2009) goes further to suggest that no egalitarians have offered a satisfactory explanation of the intrinsic value of equality

ownership within ASU is simply formal, or 'capitalism does not preserve complete self-ownership, since the worst-off's self-ownership is not robust enough to qualify as such' (Cohen, 1995, p. 278).

Joint-ownership could offer an alternative to Nozick's 'first claimant' approach to initial appropriation, as self-ownership does not necessarily say anything about resource allocation. Joint ownership of resources would allow each person to still be a full self-owner. However, Cohen also notes that the clear critique of this approach is that it renders self-ownership 'merely formal' (Cohen, 1995). Such an attack cannot be undertaken by Nozickians, who suffer from the same critique. As such, Nozick's idea that equality and self-ownership cannot be reconciled within his framework must be considered erroneous. The point of the joint ownership argument is that either self-ownership is either merely formal, or it is compatible with equality of condition.

2.2 Slavery

A second claim that Cohen refutes is that a rejection of self-ownership induces slavery. For Nozick, a loss of self-ownership would mean that such things as a compulsory eye redistribution could occur. Allegedly, pure equality would stress that each individual deserves to have at least one working eye. Therefore in a consequentialist egalitarian system eyes could be removed from individuals and redistributed to those without working eyes. Cohen however makes clear that there are other reasons, other than that of self-ownership that would prevent such a redistribution of eyeballs (Cohen, 1995). This therefore counters the idea that self-ownership is the only thing protecting individuals' rights to their bodies. Cohen also confronts Nozick's claim of how taxation of income constitutes 'forced labour' (Cohen, 1995). Though he accepts taxation to be troubling for self-ownership, he argues that it does not represent so great a violation of rights as to represent 'forced labour'. A brief comparison between an individual forced to pay tax on income, and a chattel slave is enough to see that Nozick shows the exaggeration in terms of the ranges of choices and liberty available. Furthermore, Cohen contends that Nozick's problem with taxation of income is one of

property rights violations, rather than of 'forced labour'. Taxation breaching property rights is somewhat undesirable, but does not constitute slavery or 'forced labour'.

2.3 Failures at bringing the two concepts together

Though weakening the self-ownership doctrine, Cohen nonetheless argues that bringing equality and self-ownership together is not yet achievable (Cohen, 1995). He argues that an egalitarian proviso cannot be reconciled with self-ownership.

'No egalitarian rule regarding external resources alone will, together with self-ownership, deliver equality of outcome, except, as in the case of joint ownership, at an unacceptable sacrifice of autonomy' (Cohen, 1995, p. 15)

He accepts that there is an intrinsic value in self-ownership, that cannot be readily ignored. Though not impossible, the task of bringing equality and self-ownership together is a considerable but necessary challenge, as Nozick's self-ownership thesis fundamentally confronts egalitarianism. It cannot be ignored, and must somehow be overcome. Cohen's analysis of ASU opens up further areas of investigation, and acts as a catalyst for the future left-libertarian attempts to unite self-ownership and equality within a single theory of justice. He highlights problems and dilemmas within self-ownership, and Marxism that others will need to overcome. If not overcome, then the resulting Left-Libertarian outcomes are likely to struggle with the same problems as Nozick. In the same vein, Cohen's labours highlight potential ways that elements of self-ownership can be made more amenable to equality. *SFE* therefore acts to guide those seeking to bring equality and self-ownership together, offering potential solutions, as well as highlighting problems. Cohen's evaluation of Nozick will be particularly useful in assessing the relative merits of Otsuka and Vallentyne's Left-Libertarian

theories. Whilst Otsuka broadly works within Cohen's guidelines, Vallentyne does not, and the consequence is a significantly weaker attempt at reconciling self-ownership and equality.

3 Uniting equality and self-ownership: Otsuka and Vallentyne

The previous section highlighted the problems with Robert Nozick's conception of self-ownership and equality. The theories of two Left-Libertarian theorists will now be assessed in order to judge which, if either, of them can offer a better understanding of the relationship between self-ownership and equality. The two versions that I shall contrast are that of Peter Vallentyne and Michael Otsuka. These are selected as they both take an approach of 'equal opportunity for welfare Left-Libertarians', which I believe to be the most promising version of left-libertarianism. However, this does not mean that there are not significant differences between them. Put simply, Vallentyne follows a broadly Georgist approach (Fischer, 2014). Henry George (1879) argued for regular rent payments on appropriated land that would initially begin unowned. The following sections will show how Vallentyne's left-libertarianism struggles in comparison to Otsuka's. These two diverging approaches will be assessed in their approach to several key areas: Self-ownership, world-ownership, the Lockean proviso, taxation, and redistribution. Otsuka's left-libertarianism will be shown to offer both a more genuine form of self-ownership and greater equality.

Before dissecting the differences between Otsuka and Vallentyne's arguments It is important to understand that they are in many ways very similar. Both argue against Nozick and in favour of greater equality. Similarly, each agrees that some form of taxation is needed. That which is taxed should then be redistributed to allow for an equal opportunity for welfare. Michael Otsuka's comments regarding the joint effort of himself, Hillel Steiner, and Peter Vallentyne to defend left-libertarianism (Steiner, et al., 2005) nonetheless makes clear that their differences are significant:

'We discovered during this period that our mutual commitment to this version of liberal egalitarianism was more an overlapping consensus than a shared comprehensive doctrine.

Our normative and conceptual disagreements were striking, and it was only after persistent efforts to persuade one another to our respective points of view and some artful papering over the remaining differences that we were able to publish a piece to which the three of us could sign our names' (Otsuka, 2009b, p. 132)

The 'striking' normative and conceptual disagreements between himself and Peter Vallentyne will now be set out.

4 Self-Ownership

The first contrast that will be illustrated between Peter Vallentyne and Michael Otsuka is in their respective definitions of self-ownership. These definitions form the basis for the subsequent attempts to reconcile self-ownership with equality. The next two sections will set out the contrasting definitions, and illustrate the superiority of the Otsukian argument.

4.1 Vallentyne's self-ownership

Peter Vallentyne's theory of self-ownership has been expanded upon and alluded to in a wide range of his works. Vallentyne essentially defends much of the Nozickian ideas on self-ownership, and supports 'full' self-ownership. Whilst he accepts the importance of Cohen's (1995) critique of the self-ownership thesis, he nonetheless believes it can be overcome to allow for a version of 'full' self-ownership to be unified with equality.

Vallentyne accepts many of Cohen's criticisms of full self-ownership in SFE (Vallentyne, 1998). He sets out in depth three of Cohen's key criticisms, none of which he makes any significant inroads into

refuting. However what Vallentyne does argue is that whilst Cohen looked at joint ownership, and equal share ownership of resources¹¹, there are other more defensible options available.

'For, although joint ownership of natural resources leaves individuals no freedom to do anything without the consent of others, and equal share ownership does too little to compensate for unchosen disadvantage, there are plausible accounts of the ownership of natural resources that avoid the problem of requiring the consent of others to do anything while taking the promotion of equality more seriously.' (Vallentyne, 1998, p. 19)

Vallentyne is essentially arguing here that although full self-ownership cannot be reconciled with joint ownership, this does not rule out full self-ownership from being applicable to other cases. Here though, Vallentyne appears to have left himself rather open to the very same criticisms that Cohen aimed at others:

'Self-ownership is a purely formal notion, and does not ensure that one has any effective autonomy involving physical actions. If the rest of the world is owned by others, no physical action is permitted without someone else's approval (since anything one does would involve using someone else's property). In such a situation one has no effective autonomy involving physical actions.' (Vallentyne, 1998, p. 6)

He accepts that his version of self-ownership to be merely formal, since no refutation of this challenge is offered. However, what gives Vallentyne's self-ownership more meaning is his 'equal opportunity for welfare' approach. This, he argues, takes the merely formal concept of self-ownership, and embeds it within an egalitarian framework to ensure that individual autonomy is upheld. What will however become evident later in this thesis is that the level of autonomy afforded to individuals via Vallentyne's self-ownership is significantly less than that offered by Otsuka. Just as Cohen criticized Nozick for failing to give 'z' effective autonomy, due to him being the last to

¹¹ Equal share ownership of resources is defended by Hillel Steiner (1994), and heavily criticised by Cohen (1995).

appropriate land, Vallentyne faces the same objection. Vallentyne can justify egalitarianism just as has been done by joint-ownership egalitarians: by making self-ownership 'formal'. Although Vallentyne rightly points out that this attack cannot be viably pursued by right libertarians, this does provide an unseemly unification of self-ownership and equality. In fact, Barbara Fried's critique of left-libertarianism as a whole is, in fact, much more applicable to Vallentyne than to Michael Otsuka. Fried argues that self-ownership is weakened so as to become obsolete and meaningless in order to fit within egalitarianism (Fried, 2004). The formal self-ownership that Vallentyne defends certainly falls into this group.

Vallentyne almost entirely accepts the concept of full self-ownership that Cohen distills from ASU (Vallentyne, 2009). These being: rights to fully manage oneself; rights to full income; and rights to transfer fully any of these rights through market exchange. According to Vallentyne though, the right to transfer resources is not fundamental to the framework of full self-ownership.

'One can endorse a partial form of self-ownership (e.g., control rights) without endorsing full self-ownership (with full tax immunities). Indeed, the unrestricted right to transfer tax immune wealth by gift must, I believe, be rejected by egalitarians—at least for cases of wealth being transferred to a person of a younger generation.' (Vallentyne, 1998, p. 11)

Vallentyne's approach to 'full' self-ownership here seems to become increasingly pragmatic, as full self-ownership is championed, but the inconvenient inegalitarian elements are omitted. The justification for such a prohibition is that 'such a right can give rise to wealth dynasties, and that is unacceptable from an egalitarian perspective' (Vallentyne, 1998, p. 11). This has been labelled 'Full Control' self-ownership; it consists of full liberty rights, and full security rights (Vallentyne, 2009). Full ownership, Vallentyne argues, is a bundle of rights that can in fact be separated from each other. He lists the following rights that together make up 'full' self-ownership:

- (1) control rights over the use of the entity (both a liberty-right to use it and a claim-right that others not use it),
- (2) rights to compensation (when someone uses the entity without one's permission),
- (3) enforcement rights (e.g., rights of prior restraint if someone is about to violate these rights),
- (4) rights to transfer these rights to others (by sale, rental, gift, or loan), and
- (5) immunities to the non-consensual loss of these rights. (Vallentyne, 2009, p. 4)

Vallentyne argues that it is possible to have 'full' control rights, without having the right to then transfer those rights to another. He argues that the theory of full self-ownership 'claims that, as a matter of normative fact, agents fully own themselves as opposed to something weaker.' He argues for full conclusive and unconditional rights to the four that he lists. Anything less than this 'full' self-ownership though would be a 'departure from libertarianism in the strictest sense'. I will argue that this pragmatism, with regards to the self-ownership thesis appears incoherent. Taking 'full' self-ownership in the Nozickian style, and then extricating certain aspects which fail to fit within a designated egalitarian model seems questionable. The logic of removing transfer rights from 'full' self-ownership is therefore flawed.

Vallentyne talks about rights as if they are somehow entirely separate, and not inevitably interlinked (Vallentyne, 2009). The assumption that goes with this is that transfer rights can be removed from individuals without their full self-ownership being limited. The 'bundle' of other rights would still constitute 'full' self-ownership in this event (Vallentyne, 2009, p. 59). Transfer rights cannot be removed from 'full' self-ownership without limiting the level of self-ownership available. As a Nozickian full self-owner, I would have the right to control the resources that I possess, and to transfer them to others whenever I choose. So long as the initial acquisition of resources was just, then all steps leading from an initially just distribution by just means are themselves just. As such, I have full control over the resources at my disposal.

However, Vallentyne's de-bundling of full self-ownership would see this reduced. Let us assume that I have 'full control over how I use my resources, and protection against them being taken against my will'. Nonetheless, I would lack the control to bequeath my resources to others. The clear conclusion here must be that my control over my resources is lessened. Where before, under Nozick's full self-ownership, I could use my resources however I chose, now under Vallentyne I no longer have such extensive control (Vallentyne, 1998, p. 11). The 'liberty rights' within Vallentyne's theory are therefore clearly less than full. The range of choices that I am at liberty to make with the resources that I possess is lessened, and therefore less than full. Here then Vallentyne falls into the problem that he raised concerning partial self-ownership being a 'departure from libertarianism in the strictest sense'. Vallentyne notes the understanding that 'individuals only have this full liberty *initially*', as it can be weakened by our choices over time (Vallentyne, 2009, p. 62). But this is erroneous, since the liberty that individuals have *initially* cannot be full without the ability to transfer resources.

Vallentyne does however make an important distinction between 'natural resources' and 'artifacts'. An artifact is something that has been transformed by an agent. For example:

'land, seas, air, minerals, etc. in their original (unimproved) states are natural resources, whereas such things as chairs, buildings, and land cleared for farming are artifacts (composed partly of natural resources).' (Vallentyne, 2011, p. 4)

Since individuals have mixed their labour with natural resources and added value, 'artifacts' should therefore be deemed different to 'natural resources'. Individuals may not necessarily transfer natural resources to another, and bequests are prohibited on the basis that the dead have no rights (Steiner, 1994). Vallentyne does however support the right of individuals to transfer 'artifacts' during their lifetime, as the following reconstruction illustrates:

- 1) As a full self-owner I have initial full control over my person

- 2) My rights to the produce of my labour are as strong as my rights of self-ownership
- 3) I can give away my rights to my person
- 4) ∴ I can give away my rights to my artifacts.

Vallentyne argues that (1) people are full self-owners, with full control rights. In addition, (2) he argues that artifacts (something produced by an individual through his labour) becomes his property, and no other has any claim right over it. The individual in question has full control over that which they produce by mixing their labour with natural resources. It follows that 'taxes on artifacts are deemed unjust' (Vallentyne, 2011, p. 4). Vallentyne further argues (3) for the right of individuals to voluntarily enslave themselves if they so choose, so long as they make the decision of their own volition and with suitable understanding of the situation¹². From these first 3 premises it therefore seems logical to suggest that any individual should have the right to give away any artifacts that they possess.¹³ If making something gives you a right to it that are equivalent to your rights over your own person, as Vallentyne argues, then the rights to that produce must be transferable in the same way that voluntary slavery is accepted. Vallentyne therefore supports the transfer of artifacts. Furthermore 'If an agent fully owns a given resource, he is morally free to destroy it if he wishes' (Vallentyne & Steiner, 2009). It is thus not a requirement of individuals that they must make sacrifices for the benefit of future generations. However, to allow artifacts to be transferred would as Vallentyne previously notes, allow for the setting up of hereditary dynasties and therefore is un stomachable for an egalitarian. To allow resources to be destroyed also allows the current generation to discriminate against future generations. Both of these issues are however resolved by Michael Otsuka.

¹² Vallentyne sets out a refutation of critics of voluntary slavery in (Vallentyne, 2009)

¹³ Unlike Otsuka, Vallentyne does not differentiate between things made from the person and things made from outside of the person. Instead, similar to Nozick he concludes that you have a stringent right to anything that you mix your labour with to add value.

4.2 Otsuka's Self Ownership

Michael Otsuka's conception of self-ownership is different. Otsuka argues for a 'robust' self-ownership that is 'less than full'. In this he is following on from G.A. Cohen who was the first to highlight the need for 'effective autonomy'. In *SFE* Cohen makes clear that self-ownership needs to be more 'robust' than that stipulated in ASU in order to protect autonomy and ensure that self-ownership is not 'merely formal' (Cohen, 1995). Otsuka therefore attempts to circumvent much of the aforementioned criticisms of Nozick, and Vallentyne by adopting a different form of self-ownership.

'Like all other versions of Lockean libertarianism, mine takes a right of self-ownership seriously, where such a right consists of robust and stringent rights of control over one's mind, body, and life.' (Otsuka, 2006, p. 9)

Otsuka therefore argues that 'robust' self-ownership is still a form of self-ownership 'inspired' by Locke (Otsuka, 2003). However, the key critique of Otsuka's conception of self-ownership has been that it is completely separate from Lockean Libertarian self-ownership (Risse, 2004). Matthias Risse and Jan Narveson in particular have focused their attention upon Michael Otsuka's attempt to join self-ownership and equality. This section will therefore address some of this criticism of a 'robust' self-ownership, to answer the essential question as of whether a 'robust' self-ownership is still libertarian self-ownership

Michael Otsuka first identifies "libertarian right of self-ownership", while 'less than full because it does not prohibit all unintentional incursions upon one's body', includes these two rights: (Otsuka, 1998b):

- 1) 'A very stringent right of control over and use of one's mind and body that bars others from intentionally using one as a means by forcing one to sacrifice life, limb or labour, where

such force operates by means of incursions or threats of incursions upon one's mind and body (including assault and battery and forcible arrest, detention, and imprisonment)

2) 'A very stringent right to all of the income that one can gain from one's mind and body (including one's labour) either on one's own or through unregulated and untaxed voluntary exchanges with other individuals.' (Otsuka, 2003)

Otsuka uses his weaver example to defend (2). In this artificial world the only material available to make clothes with is human hair. Now the first person is hirsute and capable of weaving, whilst the other is incapable of weaving and bald (Otsuka, 2003, p. 18). The rights of the individual to his own body are deemed inalienable by libertarians. To force the weaver to give up sweaters to the bald man would violate his libertarian self-ownership. In this regard Otsuka agrees with Nozick. However, 'Nozick's objection to redistributive taxation in general is persuasive only if one mistakenly assimilates cases that involve worldly resources with cases that do not' (Otsuka, 2003, p. 17). Nozick's complaint is essentially on the grounds of the violation of property rights, rather than against being forced to work (Otsuka, 2003, p. 20). Individuals do not have the same level of control over resources that do not emanate from themselves.

Otsuka does however later accept that this second point is too strong. Nir Eyal's Wilt Hairberlain example illustrates the separability of rights to income from rights to the fruits of one's labours, since 'this is an example of income from one's body that is not also the result of one's (non-trivial) labour' (Eyal, 2006, p. 302). A tax on Wilt Hairberlain is thus easier to justify. Unlike Otsuka's weaver example Wilt Hairberlain is not forced to work on behalf of another in order to pay his income tax. Instead, He is an individual who chooses to shave his hair for his own enjoyment. He realizes however that other people are willing to pay considerable amounts of money for the hair that he has shaved. Thus he develops vast wealth, and creates massive inequality just as in the Wilt Chamberlain example. Eyal shows that in such a circumstance, taxation can be far more justifiable than one in which an individual must toil in order to pay the tax. The separation between the rights to income,

and the rights to the fruits of one's labours therefore become apparent. As Hairberlain does not need to toil, taxing the income that he receives is much easier to support than in Otsuka's weaver example.

'Robust' self-ownership however differs here in that it includes a third provision which adds:

'Rights over enough worldly resources so that others cannot, by means of withholding access to their resources, force one to come to the assistance of another via sacrifice of life, limb or labour.' (Otsuka, 1998b, p. 84)

Otsuka's 'robust' self-ownership thus used the libertarian rights of self-ownership, whilst also making provisions to ensure that 'effective autonomy' could be maintained (Cohen, 1995). Cohen's critique of Nozick's self-ownership is thus overcome by Otsuka's alternative approach. Otsuka supports a libertarian rights to self-ownership, where individuals have the autonomy to enable them to affect their own lives. In adding this in, Otsuka is accepting that his self-ownership theory is less than the 'full' self-ownership preached by Nozick and Vallentyne (Nozick, 1974). Instead this acceptance allows for a robust framework that can accommodate stringent libertarian rights, but also encompasses Cohen's ideas on the need for autonomy (Cohen, 1995).

Unlike Vallentyne, apart from the specific case already mentioned where one's own body is used, Otsuka does not believe that 'artifacts' necessarily have any special attachment to their creator. Though individuals have the right to the income of their labour, he differs in regards to 'artifacts'. Allowing the first generation of inhabitants to use all resources available to them is clearly to discriminate against future generations (Otsuka, 1998b, p. 163). Egalitarians therefore need to place some restriction upon the actions of individuals in terms of intergenerational transfers. For each individual to have sole rights to use or destroy the property that she occupies during her existence there will inevitably be problems for future generations. For example, if there are an infinite number of generations living in a designated area, then each individual would have to be given an infinitely small amount of resources from which to live. Clearly there is a considerable problem here. The

solution arises in removing the right of individuals to transfer or destroy resources that they have appropriated. Individuals are thereby required to return resources to no-ownership when they die of an equivalent value to when they appropriated them. This ensures that the problems of intergenerational degradation can be overcome. Otsuka therefore offers a solution to the problems that arise in Vallentyne's work. Since Vallentyne allows for transfer of artifacts, and allows individuals to destroy resources, his system cannot be sustainable in the long term. Otsuka however offers a system of ownership whereby resources need to be returned to 'no-ownership' with equivalent value attached. This negates the problems of intergenerational justice that plague Vallentyne. Furthermore, by allowing artifacts to be passed on Vallentyne is continuing the system of wealth accumulation that is so abhorrent to egalitarians. Therefore, though his rights over artifacts are seemingly 'fuller' than Otsuka's, the consequences for egalitarianism are extremely negative. An egalitarian would be unable to support the form of ownership that Vallentyne supports.

4.3 Vallentyne Vs Otsuka

As identified above, Peter Vallentyne and Michael Otsuka differ significantly over their views of self-ownership. Both agree on many aspects of self-ownership. For example that self-ownership is not necessarily linked with property in the way that Cohen implies, and that not all rights of self-ownership should be upheld. However, Vallentyne's self-ownership attempts to follow Nozick and employ 'full' self-ownership is flawed for a number of reasons. Firstly, he attempts to 'de-bundle' rights, so as to remove those which he does not think should be included (transfer rights). This is problematic for Vallentyne, rather than Otsuka, due to his insistence upon 'full' self-ownership. Secondly, Vallentyne makes no allowance for future generations, and deems artifacts as intrinsically separate from natural resources. Finally, Vallentyne supports the 'incursion model', whilst Otsuka attempts to avoid such issues.

Peter Vallentyne's attempt to continue to use 'full' self-ownership fails to overcome the significant challenges that were posed to it by Cohen. His desire to accommodate egalitarianism within its framework appears to involve removing any aspects of 'full' self-ownership that are characteristically inegalitarian. Yet doing so purely for reasons of equality undermines the supposedly 'full' self-ownership of the individuals in question. In contrast Michael Otsuka's robust self-ownership ensures a level of autonomy of all involved, whilst accepting that the 'self-ownership' that he supports is less than full. Vallentyne attempts to keep a 'full' self-ownership, whilst removing some transfer rights, which as I have argued, appears to be flawed.

In 'Responsibility and Compensation rights' Vallentyne's full self-ownership clearly follows Nozick in adopting the 'incursion model', for interference in the lives of others (Vallentyne, 2009, p. 86). 'A persons rights define certain boundaries, which, if crossed, raise the question of whether the right has been intruded upon' (Vallentyne, 2009, p. 86). Boundary crossings are deemed the point at which rights can be violated. Otsuka however highlights the significant problems with such an approach across a number of examples (Otsuka, 2009b). 'Full' self-ownership necessarily implies that one can only be restricted in ones actions if they directly violate the rights of another. This is something 'with which anyone who is committed to self-ownership must grapple' (Otsuka, 2009b, p. 143). If Nozick's notion of 'boundary crossing' is accepted, as would seem implicit in 'full' self-ownership, then a significant number of counter examples would need to be overcome. Otsuka makes clear that the likes of Steiner and Vallentyne have been unable to effectively overcome these examples.

Were I to build a solid and airtight casing around your property, forcing you to slowly die, would that constitute a breach of self-ownership boundaries? It does not appear so. I would not have involved any substantive border crossing, and so would I not have violated your self-ownership? Since no boundary is crossed by forming an airtight casing around an individual no breach of self-ownership has occurred. This is however a wholly unsatisfactory outcome. Intuitively it appears that I have

affected your self-ownership by putting you in a position whereby you are unable to breathe freely. The incursion model however fails to overcome this challenge, and cannot show why such an endeavor would represent a breach of self-ownership.

Secondly, Otsuka talks about how the imposition of risk does not in itself count as a boundary incursion. To force someone to play Russian Roulette against their will, where two of the six chambers are loaded is not in itself a boundary incursion. Obviously if the individuals were to 'lose' and be shot, then that would necessarily be a boundary incursion. But to force someone to play, and force them to take the risk is not a violation of self-ownership in itself. This again appear counter-intuitive. Surely by forcing someone to take on a risk by pointing a gun at their head, then their self-ownership is necessarily breached? Similarly if a gunman coerces an individual into yielding property of products would this constitute a violation of self-ownership? The incursion model is unable to explain how these situations represent a violation of self-ownership. An alternative to the 'incursion model', in the form of the 'less than full' self-ownership that Otsuka supports therefore appears the logical solution. Such actions against individuals would violate clause (1) of Otsuka's definition and would therefore be unacceptable. Self-ownership using Nozick's incursion model cannot effectively cover situations where self-ownership is intuitively violated without 'border crossings' of any sort.

Finally, Phillipa Foot's 'trolley problem' further demonstrates the problems with 'full' self-ownership (Otsuka, 2008). To summarise, a runaway train is set to run into a group of bystanders. However, an individual has an opportunity to divert the train so that it takes another route and avoids the group. This path will however mean that a single individual is killed. Proponents of full self-ownership would oppose such a diversion as it would entail an unjustifiable breach of the individual's self-ownership (by killing him). Even though such an action would save the lives of a greater number, it would be indefensible for a full self-owner. A system that forbade any and all unwanted interferences with one's person would lead to a troubling conclusion. Full self-ownership simply cannot account for such situations, and would lead to the deaths of the group, rather than the

solitary individual. No individual may be sacrificed for any others, no matter how many others would stand to benefit from such an action. For this reason Otsuka rejects 'full' self-ownership as an unusable concept. It seems entirely reasonable to divert the trolley in this situation, to save a greater number of lives. Otsuka thus makes clear that there must therefore be some breaches of individuals control over themselves, and their ownership of themselves must be 'less than full'.

Fundamentally, Michael Otsuka's view of a 'robust' self-ownership is stronger than that of Vallentyne. Otsuka's self-ownership ensures that individuals have greater freedom over their own lives. Otsuka offers a more autonomous individual, a more egalitarian alternative, and therefore a more viable framework from which to begin the left-libertarian mission.

5 World Ownership

Of significant consequence for Vallentyne and Otsuka's attempts to reconcile self-ownership and equality are views upon the initial ownership of natural resources. There are four forms of initial world ownership that have been adopted by left-libertarians¹⁴. These four types of initial ownership of worldly resources are: joint ownership; equal ownership; common ownership; and no-ownership. The first two of these will not be commented upon. Cohen's criticisms of joint-ownership, demonstrate the problems with such an approach (Cohen, 1995). Furthermore, a universal consensus before any individual's actions would be completely impractical.¹⁵ Similarly, Cohen's critique of Steiner's equal ownership of resources shows how it leads to a 'merely formal' self-ownership. This leaves the last two alternatives: common ownership, and no-ownership.

Common ownership of resources means that each individual is able to use resources, but is not able to claim any ownership of them (initially at least), as they are owned in common with everyone else within society. Individuals may lay claim to resources without some form of payment to the rest of

¹⁴ Risse (2004) lists three forms, leaving out the equal-ownership of Steiner et al. Presumably as a result of Cohen's critique.

¹⁵ For a recent defense of joint ownership of resources, see Vrousalis (2011)

society for the value of the privately appropriated resources. No ownership on the other hand simply stipulates that no-one has any initial claim right over resources (Risse, 2004). Vallentyne favours initial common ownership of worldly resources, whilst Michael Otsuka favours initial no-ownership of worldly resources. Michael Otsuka's position of no-initial ownership of natural resources is one that he shares with Nozick and the right libertarians. Here then, it is Peter Vallentyne who makes a movement away from orthodox libertarian ideas about the initial ownership of natural resources. Matthias Risse, in his critique of left-libertarianism in general makes it clear however that the difference between common ownership of resources, and no-ownership of initial resources is a significant one (Risse, 2004, p. 344).

As mentioned, Peter Vallentyne differs from most libertarians in that he supports initial common ownership of resources (Fischer, 2014, p. 324). In this he follows on from the writings of Henry George (1879). George argued that all land should be commonly owned; this is different from joint ownership in an important way since it does not require universal consent in order to act. For Vallentyne, some appropriation of resources must be allowed without the consent of others and to forbid this would be 'crazy'. Cohen dismissed common ownership as allowing the able bodied to appropriate whatever resources they wished without any responsibility to help those who are less advantaged (Cohen, 1995, p. 104).

Arabella Fischer defends initial common ownership by suggesting that Cohen's criticism is not applicable in the case of Vallentyne or George (Fischer, 2014, p. 6). Though resources are available to be used by any individual, they are available for use on the basis that the individual in question owes something to the rest of society (Fischer, 2014, p. 6). This qualification is suggested as overcoming the challenge that Cohen poses to common ownership. Risse however argues that 'common ownership seems to be plausible only to those who hold a view that ties individuals' lives together and shares out fortunes and misfortunes', but no-one who supports self-ownership could ascribe to such a view (Risse, 2004, p. 350). Common initial ownership of resources enforces non-contractual

obligation upon individuals. Thus although there is no reason why worldly resources cannot be initially commonly owned, the consequences of such ownership makes a reconciliation of self-ownership and equality much harder. Initial common ownership of natural resources, as Vallentyne proposes, is thus feasible but produces problems in its application, as shall be shown in later chapters. Michael Otsuka's explanation of initial ownership of worldly resources is however much more orthodox within Libertarianism:

'in the absence of any such belief that the earth was previously owned by some being who transferred this right of ownership to humankind at the outset, it is reasonable to regard the earth as initially unowned.' (Otsuka, 2003, p. 22)

However, the implication that common-ownership requires a deity is ineffectual. There is no greater a need for a God within common-ownership of resources than it is within self-ownership itself. This claim descends from Locke's *Second Treatise on Government* wherein he argues that God gave the world to all men, and thus all men have common ownership of it. Jan Narveson argues that outside of a theistic framework, common ownership is 'meaningless' (Narveson, 2001, p. 73). Yet as Risse highlights this view is incorrect (Risse, 2004, p. 18). Instead Leon Walras and Vincent Bourdeau have highlighted that common ownership can be grounded not in theism, but in 'scientific observation', since 'human beings are by nature social beings' (Otsuka, 2006a, p. 163). Though it is more common to err on the side of initial no-ownership of resources,

Otsuka argues that initially, no individual has any claim right over any worldly resources. He utilises examples of two individuals that get washed up on a desert island to illustrate this point. Neither of the two castaway who arrive on the island has any claim over any of the land. Matthias Risse shows that in the absence of any other method of orchestrating appropriation, that the 'first grabber' principle is still in use. This does not however undermine Otsuka's arguments at all, or necessarily need further explanation as Risse contends (Risse, 2004). Instead it shows how Otsuka's theory of

self-ownership and equality does manage to exist largely within the confines of orthodox libertarian thinking.

'No-ownership' is the clearest libertarian option for the initial ownership of natural resources. That is not to say that other forms cannot fit within libertarian thinking. There is nothing in self-ownership that necessarily implies anything about the initial ownership of world resources. Although according to Otsuka Cohen seemingly argues against this, he does however undermine his argument elsewhere by accepting that:

'The principle of self-ownership... says, on the face of it, nothing about anyone's rights in resources other than people, and in particular nothing about the substances and capacities of nature, without which the things that people want cannot be produced.' (G.A Cohen from Otsuka, *Self-Ownership and Equality: a Lockean Reconciliation*, 2006 p159)

Left-libertarianism says nothing about the 'rights in worldly resources beyond those that one is able to acquire through the exchange of one's labour' (Otsuka, 1998b, p. 159). There is therefore nothing preventing other forms of initial ownership of worldly resources. G.A Cohen illustrated this in his examination of joint world ownership, which would offer a comparable level of 'formal' self-ownership to Nozick's no-ownership (Cohen, 1995). However, moving away from the idea of no-ownership does create significant challenges (whether it is in the form of joint ownership, common ownership or equal ownership). That is not to say that initial no-ownership is irrefutable, but that it is certainly the simplest of the four available options to defend in terms of self-ownership. By assessing the state of initial ownership of worldly resources, it is clear that both options are viable. No right libertarian could possibly challenge Otsuka's no-ownership. However, Matthias Risse has attacked common ownership as 'fraught with problems' (Risse, 2004, p. 346), many of which are identifiable with the introduction of the Georgist proviso.

6 The Lockean Proviso and the appropriation of resources

This next section will examine Peter Vallentyne's and Michael Otsuka's approaches to the Lockean proviso. As with self-ownership, I contend that Michael Otsuka's approach is more successful in achieving its aims of egalitarianism and self-ownership.

6.1 Vallentyne's Georgist proviso

In *'On Original Appropriation'* Peter Vallentyne sets out a defense of a Lockean proviso (Vallentyne, 2007). Vallentyne's defense is targeted at the radical right-libertarianism of the likes of Jan Narveson and Murray Rothbard (Rothbard, 1997). Vallentyne states that the 'satisfaction of a Lockean Proviso is indeed a necessary condition for the appropriation of un-owned things' (Vallentyne, 2007). His goal in this article is however limited to refuting one charge against the Lockean proviso, and he does not defend his own interpretation. He summarises his view as 'common ownership modified by quasi-private appropriation' (Fischer, 2014). Vallentyne argues that 'no-one be worse off than would be if no one appropriated more than is compatible with everyone having an equally valuable opportunity for wellbeing' (Vallentyne, 2013, p. 4). Vallentyne thus differs significantly from Nozick's weak Lockean proviso, by building upon Richard Arneson's ideas of equal opportunity for welfare (Arneson, 1988). Equal opportunity for welfare will be examined further in terms of the redistribution of resources in a later section. However, for the time being, its relevance lies in the restrictions upon free appropriation of un-owned resources by individuals. Equal opportunity for welfare ensuring that completely free, limitless, appropriation of resources is not possible. To maintain equal opportunities for all, the distribution of resources needs to be monitored and adapted, just as Nozick highlighted with his famous Wilt Chamberlain example (Nozick, 1974).

For Nozick, appropriation is 'just' so long as: '*enough and as good left for others*' (Nozick, 1974). Vallentyne rejects Nozick's Lockean proviso. Though he agrees with Mack that such a reading of Locke is the most feasible, he fundamentally disagrees with the strength of the proviso presented by Locke (Vallentyne, 2013, p. 4). Thus rather than criticizing Nozick's interpretation of Locke, Vallentyne's real problem lies with Locke's *Second Treatise on Government*.

'I think it more plausible that an equally valuable share (net of compensation provided) must be left for others (or more radically: a share compatible with an equal opportunity for wellbeing).' (Vallentyne, 2013, p. 4)

As such, Vallentyne suggests that he differs from Locke in wanting a much tougher proviso. This 'egalitarian proviso' would allow for the appropriation of resources, but only so long as an equally valuable share, or net compensation is left for others. For Vallentyne '*the left-libertarian theory differs from standard right-libertarian theories only with respect to the proviso*' (Vallentyne, 2013, p. 4). The proviso suggested by Locke, and then by Nozick, fails to sufficiently provide for the needs of others, and therefore needs to be replaced by one that can. In this regard then Vallentyne's acceptance of Nozick's interpretation of Locke means that his own approach is distinctly unlockean. Instead he looks to Henry George for the solution.

Vallentyne's Georgist approach uses a very different form of proviso. In *Progress and Poverty* (1879) Henry George set out a new approach to formulating a proviso, based upon land rents. Herein George argued that individuals should be free to appropriate resources that are initially commonly owned (George, 1879). However, this "ownership" can never be complete, as the individual owes the rest of society rent for the right to have sole control over the land. The individual in question therefore must pay a rent on the land that is appropriated as compensation in the form of a 'single tax'. George did not therefore prohibit the appropriation of resources without consent from others, or place any limits upon that which any individual may privately appropriate. So long as a rent is paid on any land that is appropriated then there is nothing prohibiting any individual from taking more

than one's fair share. This allows for even freer appropriation of resources than Nozick advocates. Even though Nozick utilizes a weak proviso of enough and as good' left for others, for Georgists this can be overcome, and even more resources may be appropriated by any individual, so long as compensation is paid. The Georgist proviso that Vallentyne supports thus asserts that either an equally valuable share of resources be left, or net compensation be offered to those now unable to appropriate the resources. As a Georgist Vallentyne thus argues that private appropriation should be allowed, so long as the cost to society is paid.

The land tax is justified on the basis that it is not taking the proceeds of anyone's individual endeavors from them, but removing a rent that is already attached to the land (Vallentyne, 2000). The payment is fixed to the land, and not to anyone's ability to benefit from the proceeds of their work. Since Cohen and others accept that land is not necessarily tied to self-ownership, having a fixed price to pay on the value of land is a valid tax. It is simply deemed as an unavoidable component of ownership of resources, rather than an impediment to full self-ownership. By taxing the land that is appropriated Vallentyne believes that he is able to avoid Nozick's criticisms of taxation as "forced labour" (Nozick, 1974). A man who appropriates resources, and mixes them with his labour to create value has, according to Vallentyne and Nozick, every right to the value of that produce. However the difference arises in the original ownership of natural resources. Since Vallentyne holds that individuals do not have a full right to own natural resources, his taxation of said resources can be upheld without impacting the self-ownership of individuals, who remain free to do whatever they choose, and profit however they can from the land available to them.

For example, imagine a desert island where two people (A and B) are washed ashore. A, in accordance with his rights as a full self-owner, has the right to appropriate as many of the resources as he chooses. For this privilege though he must pay rent for this appropriation to B in order to cover the potential loss that the second person has incurred from the appropriation. The value that has been lost by second person due to the first ones appropriation needs to be compensated. Where

Vallentyne differs from George is in the scale of the taxation (Fischer, 2014). As a supporter of an "equal opportunity for welfare" Vallentyne thus argues for a stringent redistribution of resources to equalize opportunities for welfare. Essentially, the first appropriator, though fully within his rights to appropriate whatever he chooses, must pay rent to the other to ensure that each has an equal opportunity for welfare.

Unlike a 'starting gate' theory¹⁶ such as Nozick's entitlement theory, this process of re-allocating resources must happen continuously to ensure that both one and two have an equal opportunity to welfare, despite the private appropriation by one (Vallentyne, 2011). Rather than being a 'purely procedural' theory of justice, Vallentyne offers a method of maintaining equality as well as self-ownership. Thus he offers 'justice' not only in terms of the duties that are owed to individuals, but also in terms of fairness and moral permissibility. In theory at least, Vallentyne's Georgist proviso allows for full-self-ownership to be reconciled with the egalitarianism of equal opportunity for welfare. By compelling those who choose to remove land from communal use to pay rent, the benefits of the appropriation can be shared equally within society.

6.2 Otsuka's proviso

Although Michael Otsuka's approach is very different, unsurprisingly, he also criticizes Nozick's weak proviso and puts forwards an alternative proviso. In *Libertarianism without inequality* the solution comes in the form of the welfarist egalitarian proviso (Otsuka, 2003). As mentioned in section 2, G.A Cohen argued that an egalitarian proviso could not be reconciled with self-ownership, even in a 'robust' form. This stronger proviso is effectively that:

¹⁶ A principle of justice where the initial set of rules are all that is set in place, and where "any distribution of resources following from another distribution of resources by just means is itself just" (Nozick, 1974)

'You may acquire previously unowned worldly resources if and only if you leave enough so that everyone else can acquire an equally advantageous share of unowned worldly resources' (Otsuka, 2003, p. 24)

Michael Otsuka, like Vallentyne, offers a potential way around this problem. Otsuka's solution involves a specific form of the egalitarian proviso that can be reconciled with self-ownership in a satisfactory way.

'Welfarist specification of the egalitarian proviso: Someone else's share is as advantageous as yours if and only if it is such that she would be able (by producing, consuming, or trading) to better herself to the same degree as you, where betterment' is to be measured in terms of level of welfare understood as the 'satisfaction of the self-interested preferences that the individual would have after ideal deliberation while thinking clearly with full pertinent information regarding those preferences' (Otsuka, 2003, p. 27)

The opportunity for welfare metric is deemed as the best solution to achieve the value of fairness. On an island with two people it can be shown that people do not have an equal claim to resources. Of the two people, A is far more capable than B simply because of mental and physical capacities. If B were to be given all the resources leaving A with none, then they would be equally well off in terms of opportunity for welfare.

'ceteris paribus, someone who would, through no fault of his on account of his mental and physical constitution, be worse off in terms of welfare than another under an equal distribution of resources has a greater claim on the island's resources than another who would be better off than he in terms of welfare' (Otsuka, 2003, p. 30).

Suggesting that each has an equal right to resources would in Otsuka's argument be to suggest that 'unfairness of a principle of acquisition which preserves disparities in the absolute levels of welfare of individuals caused by differences in their mental and physical constitution that are traceable to luck' (Otsuka, 2003, p. 31). Therefore only a principle that takes into account the effects of luck can remove the unfairness. A in Otsuka's example has no claim to resources. To do so would presuppose that A has a right to appropriate unowned resources at the expense of B. This would however reduce B's situation to a level below that of A's before any resources were brought into play. There is therefore no inherent claim-right to resources linked to self-ownership. The spread of resources within society must be done so as to satisfy the equality of opportunity for welfare. No-one therefore necessarily has the right to appropriate resources purely of their own volition. Here Otsuka differs considerably from Nozick, and more intriguingly from Vallentyne. Even though Vallentyne taxed free private appropriation, it was still allowed. Otsuka however stands out as removing the ability of individuals to freely appropriate resources at will from the equation. The welfarist specification of the egalitarian proviso provides a somewhat simpler solution than Vallentyne to the problem of the Lockean proviso. As will be shown next, this approach is much stronger and more defensible than Vallentyne's georgism.

6.3 Vallentyne Vs. Otsuka

Peter Vallentyne's proviso has a number of problems. These issues make it evident that Michael Otsuka's version of the proviso is somewhat more effective. This is in both ensuring a more egalitarian reading of the proviso, and also in the contradictions within Vallentyne's proviso that undermine his concept of full self-ownership. The problems with Vallentyne's proviso include: problems over taxation and not compensating sufficiently for illness or disease. The issues concerning taxation will be addressed in another section wherein Vallentyne's taxation policy is contrasted with that of Michael Otsuka. Vallentyne's Georgist proviso allows individuals to

appropriate as many resources as they choose, so long as rent is paid for the loss suffered by the rest of society. Here Vallentyne and Otsuka diverge.

Otsuka argues 'that such a right of self-ownership would not be robust if one lacked access to natural resources that are sufficient for one's own subsistence.' Although under Vallentyne's framework resources would still need to be redistributed, this would be dependent upon the private appropriation of resources. Take the much heralded Able-Unable example. An island has two inhabitants, one of whom is 'Able', whilst the other is 'Unable'. As mentioned in the previous section, under Otsuka's equal opportunity for welfare, 'Unable' could be able to gain ownership over such a percentage of the resources so as to motivate 'Able' to work for him. This would be the situation if ownership over most or all of the resources would ensure that each of the two individuals had an equal opportunity for welfare. However, I will now illustrate the problems that occur when Vallentyne's framework is employed. By using Cohen's Able-Unable argument, the problems of a Georgist proviso can be highlighted.

In an initially commonly owned world, both Able and Unable would have the right to use the commonly owned property. In this commonly owned world would it be possible for Able to survive without privately appropriating resources? If so, then Unable will receive no form of support through the redistribution of appropriated resources. If Able chooses to live without privately appropriating resources then Unable will surely die. If the assistance that would come via redistribution from appropriation is not forthcoming then there will be no way of equalizing opportunity for welfare between Able and Unable. Therefore if "appropriation" is viewed in terms of property rights, and having control over land, then if Able were to choose not to appropriate resources, then Unable would be unable to survive. Such a situation could not be accepted by egalitarians.

It would be a reasonable response however to suggest that it would be impossible to sustain oneself on the island without appropriating resources. By picking berries or collecting fallen coconuts Able is

clearly appropriating natural resources just as if he were to fence off a part of the island. By taking those resources he is removing their value from the communal pool. Since Vallentyne demands a rent on natural resources that are appropriated, then a tax could be levied upon Able's use of resources to assist Unable, and equalize opportunity for welfare. There are however problems here. Under Vallentyne's system Able would be liable to pay sufficient rent upon the natural resources that he appropriated so as to make it necessary for him to appropriate enough resources for himself and Unable to have a good life.

It is not too much of a stretch to then assume that Unable is liable to die fairly promptly without the support of Able. At the very least the assumption that Unable will die considerably quicker than Able seems very reasonable. This being the case, there is nothing at all stopping Able from simply waiting for Unable to die (Palmer, 1998). As Cohen mentioned when initially using the example, Able is a 'non-altruistic, ascetic and thus easily satisfied without caring whether the unable person is satisfied as well' (Risse, 2004, p. 346). He has no intrinsic reason to keep Unable alive. With initial common ownership of resources and the Georgist proviso it is not possible to compel Able to work for the benefit of Unable.

It would appear to be a rational decision on the part of Able to refuse to appropriate any resources. The Georgist proviso requires the private appropriation of resources before any redistribution can be offered. If no land or resources are privately appropriated, then no rent upon those resources can be charged. Thus Able could wait for Unable to die, before gaining full control over all of the resources on the island, and keeping 100% of the resources that he appropriates. This way ensures that in the longer term Able is able to keep his produce, and ensures that he has full control over the entire island. A Georgist proviso bases its egalitarianism upon rent payments from resources that individuals appropriate. If Able chooses instead to play the waiting game so to speak, there is nothing that a proponent of the Georgist proviso could do about it. The outcome of this is wholly unacceptable to egalitarians, and renders Unable's self-ownership 'merely formal' just as much as

Nozick's conception within ASU. Unable has no ability to exert any form of autonomy, due to being left to die slowly, without any opportunity for welfare.

In contrast, Vrousalis (2011) notes that 'Otsuka's argument in this connection is that endowing Unable with scarce, and therefore expensive, resources will elicit fully voluntary exchanges with Able.' Although Vrousalis expresses some doubts about the quality of such a system, it is undoubtedly superior to that put forwards by Vallentyne in this regard. Allowing Unable ownership over so much of the islands resources that Able is forced to work for him appears to be the only way for an egalitarian solution to the Able-Unable conundrum. Initial common ownership of resources would allow able to exist on the common land, but if Unable owned all resources then it would not be possible to avoid becoming tied up in a contractual obligation to Unable in order to be on his land. It would necessarily inhibit Able's effective autonomy, in order to ensure the survival of both. This scenario, though compromising self-ownership, has to be seen as superior outcome by an egalitarian. Obviously making Able's self-ownership 'merely formal' is an undesirable outcome; however it is something that must be done in such extreme cases to avoid human tragedy. By providing such provisions, Otsuka's welfarist specification of the egalitarian Lockean proviso must be deemed superior to the Georgist proviso that Vallentyne utilizes.

6.4 Otsuka on taxation

Like Vallentyne, Otsuka agrees that there is a need for revenues in order to carry out his egalitarian provisions. As mentioned above, Peter Vallentyne's Georgist approach utilizes heavy taxation upon land to fulfill its proviso. Michael Otsuka however takes a very different approach to taxation. For Vallentyne, a single tax should be levied upon land. However, Otsuka argues that tax should only be levied upon those who commit injustices within the system (Otsuka, 2003). The 'unjust' will thus pay for the redistribution that will be required for the disabled. This ensures that taxation is not raised indiscriminately, for Otsuka agrees to Cohen's idea that though taxation is not the same as forced

labour, it is nonetheless a hindrance to self-ownership. Wherever possible, ensuring that only those who commit an injustice are taxed means that all people have a viable sway of opting out of the taxation: by following the rule of law. The taxation therefore does not constitute a breach of self-ownership rather the right has been forfeited. Nozick himself accepts that there are unanswered questions as to how those who commit injustices should be dealt with, and how 'justice' should be restored. In this he appears to accept that those who commit injustices are liable to lose some of their rights (Nozick, 1974). In this case that means forfeiting their right to the sole benefit of their produce.

Taxing the unjust, rather than the entire population, enables self-ownership to be preserved for those who follow the rules. Those who act justly will retain their ability to use their resources as they see fit, without being compelled to come to the aid of any other. The necessary rebalancing of resources within the society over time will therefore be done at the expense of those who fail to operate within the rules. Taxing the unjust, though not as attractive as universal taxation, would be supported by egalitarians. Otsuka questions whether egalitarians would really oppose a system of non-universal giving whereby the disabled are fully provided for.

In addition however, Otsuka makes clear that there will inevitably be some circumstances where some form of extra taxation is inevitable and unavoidable. The income received from taxing the unjust may not cover the needs of the less well off. However, 'even a partial replacement of universal taxation with the taxation of the unjust is desirable from a libertarian point of view' (Otsuka, 2006a). In these instances he argues that only an 'unreasonably fanatical devotee of a right self-ownership could insist that such a right is so stringent that it rules out the imposition of a tax' (Otsuka, 1998b, p. 154). Otsuka agrees with Cohen that Nozick's complaint against taxation is not about forced labour but a violation of property rights. Since the right of self-ownership he puts forward is less stringent than libertarians think it is, 'it may justifiably be infringed in this circumstance' (Otsuka, 1998b, p. 155).

Taxation can be acceptable in the context of purchasing land with the proviso that a certain rent or tax is already attached to that land. For example, a farmer purchases land that came with the connotation that a certain amount must be donated to the needy. The 'state' could therefore legitimately step in to force her to comply, without infringing any property rights. This approach lies very close to Vallentyne's Georgism. However, there are significant differences between taxation within Vallentyne and Otsuka. The fundamental difference that I will highlight is that whilst taxation can be an important element in some instances within Otsuka's framework, it is by no means integral. There are a vast array of instances wherein no taxation at all is required, or where taxing the unjust would cover the costs. For example, a Otsukian distribution of resources to maximize equal opportunity for welfare would not necessarily demand taxation. In an island of two people wherein each is accepted to have no initial claim right to any resources, then it is more than possible for each to appropriate sufficient resources without the need for taxation. In order to make up for the natural differences which may exist between the two people, the available land will be distributed between them accordingly. Taxation is thus not inherent at all within such a set up, and is by no means essential. Tied to this is the fact that for Otsuka, as taxation remains a difficult subject, it is something which can be readily avoided in most instances. As a result, Otsuka is able to avoid more of the problems that Cohen highlights with taxation than Vallentyne manages.

This is completely different to Vallentyne's allowance for appropriation on the proviso that rent be paid to cover for equal opportunity for welfare between individuals. Within this system, it is unlikely to be possible to appropriate resources from the communal pool without having to pay rent on them. Otsuka relies much less on the need for taxation. Furthermore, the utilization of the 'unjust' to cover the cost of the disabled allows for the redistribution of resources. Nozick argued that the only way to redistribute resources was through taxation that was equivalent to forced labour. But Otsuka's approach manages to sustain 'patterns' in society, without self-ownership being compromised by excessive taxation. Since each person has the choice whether to commit an injustice or not, the tax upon the unjust is readily avoidable, those who pay it do so having had the chance to avoid doing so.

They therefore cannot be suggested as being subject to 'forced labour', since the taxation is the result of their own individual choices, and could have been avoided.

Michael Otsuka's views upon taxation thus differ from Peter Vallentyne's. These differences mean that Otsuka's approach to taxation is more suitable for the left-libertarian project. The reasons that Otsuka gives to justify a form of a land tax are not applicable to Vallentyne. He works on the basis that an individual who chooses to purchase land that has rent attached to it does so freely and of his own volition. In this instance it is not really taxation, but a form of contractual payment. However, this does not apply to Vallentyne's Georgist approach. Within this system there is no alternative to paying rent on the land that one appropriates. As a result it is impossible for anyone to avoid having to pay rent in order to appropriate land for themselves. Since it is not reasonably possible to avoid such payments, it cannot be deemed to be down to individual choice to the same extent that Otsuka's is. Since rent payments are unavoidable, they stop being an optional choice that an individual may take up, and become a compulsory form of tax. Thus, the land rents that Vallentyne supports struggle to overcome the challenges of taxation that Cohen highlighted. Otsuka's use of taxation is however fundamentally different. Rather than being the central tenet of his thesis, taxation is considered a largely unwanted addition that is recognized to be occasionally unavoidable. He does however make no bones about accepting that taxation is a tricky area for those supporting self-ownership. The relatively lesser position of taxation within Otsuka's theory represents a considerable strength, given the difficulties that Cohen and others have had refuting Nozick's critique of taxation.

7 Redistribution of resources

All egalitarians differ from Nozick in terms of the need to redistribute resources and argue for 'some sort of promotion of equality of material advantage (perhaps constrained by certain rights)'

(Vallentyne, 2002, p. 530). How best to redistribute resources is a highly contentious subject within both left-libertarianism, but also egalitarianism in general.

Peter Vallentyne's approach amounts to a far less egalitarian redistribution of resource, and is one that luck egalitarians¹⁷ would be loathed to accept. The differences that arise centre largely upon what exactly should be done to overcome the impact of bad luck. Equal opportunities for welfare left-libertarians, like egalitarians in general, are in favour of taking luck into account when redistributing resources. Ronald Dworkin for example raised the idea of compensating for bad 'brute' luck, events that the individual in question did not influence, or could not reasonably be expected to have had knowledge of influencing. This idea has formed the basis for recent material egalitarianism (Vallentyne, 2002).

7.1 Vallentyne on redistribution

Peter Vallentyne's egalitarian theory views justice in terms of 'what we owe others' (Vallentyne, 2002). He separates himself from other left-libertarians and egalitarians by not accepting all forms of brute luck as worthy of compensation from society. Instead he argues 'in favor of equality of initial opportunities for advantage and against equality of brute luck advantage' (Vallentyne, 2002, p. 532).

'Brute' luck will include some form of outcome luck as well as the luck enjoyed in initial opportunities for advantage that Vallentyne supports. To argue for this separation Vallentyne first sets out the four factors that work together to jointly determine what outcomes are realised in whatever situation: brute luck in initial opportunities; brute outcome luck; individual choices; option outcome luck (Vallentyne, 2002, p. 15). These four categories are deemed distinct. Whilst for Dworkin and others 'choice' came under 'option luck' Vallentyne differentiates between the two. Non-risky decisions which are personal choices are deemed to be distinct from optional risks that an individual might

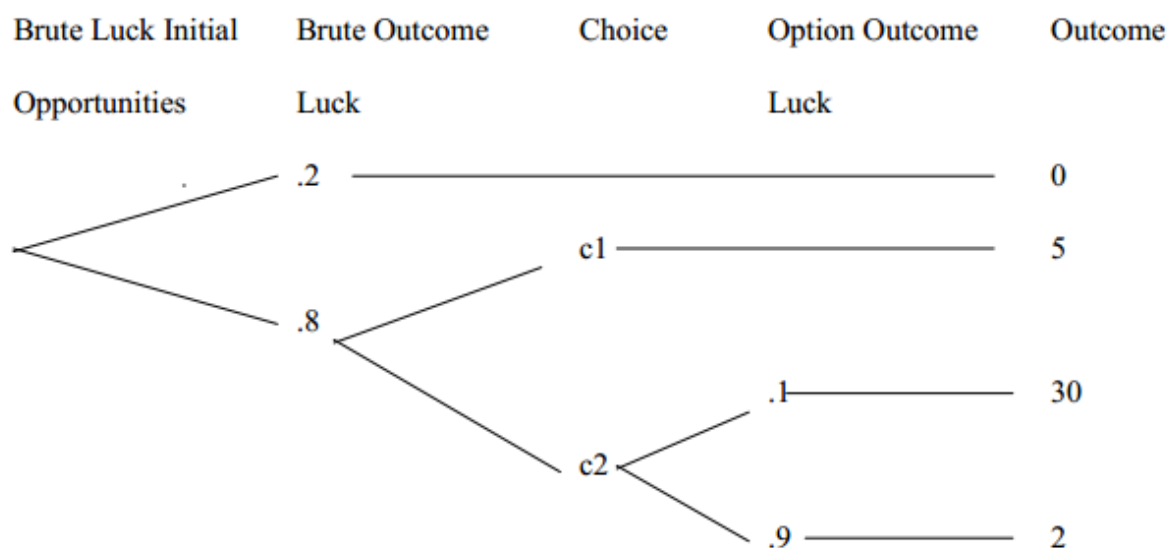
¹⁷ Luck egalitarians argue that resources should be redistributed to account for the effects of 'luck', see Dworkin (1981)

take. Where no luck is involved at all, and things are simply a matter of choice, these actions have been placed into the new category of 'choices'.

Brute luck in initial opportunities means that at the start of proceedings, all unintended or unearned differences between individuals, that come down to 'brute' luck should attract compensation. The final two factors regard outcomes, that is, making sure that everyone has a 'fair' outcome from the situation. Option outcome luck is the difference in outcomes that occurs due to the different risks that individuals take over time. Finally, brute outcome luck is the difference between individuals due to factors beyond the immediate control of the individual.

'Unavoidability is at the core of the characterization of brute luck, but it seems plausible also to include (1) events for which the agent has no ability to influence the probability, and (2) events for which the agent is unaware of his/her ability to influence the probability (because of false or incomplete beliefs)' (Vallentyne, 2002, p. 540)

Brute outcome luck (Dworkin) thus suggests that all differences between individuals that cannot be reasonably deemed as choices, or bad option luck must be equalized. Vallentyne rejects each option except brute luck in initial opportunities. His graphic demonstration of this is set out in Figure1:



(Figure 1: Vallentyne, Brute Luck, Option Luck, and Equality of Initial opportunities, 2002, p. 16)

This example shows a situation wherein each of the four factors influences the final outcome. The problems with equalizing for brute outcome luck, choice and option outcome luck can therefore be clearly identified. For the initial agent there is a 20% chance of a brute luck event occurring that would prevent any further 'choices or chance events' (Vallentyne, 2002, p. 546). Following this, the 80% have the choice between a guaranteed outcome of 5 (c1) or the more risky strategy (c2) with the opportunity for a much higher pay-off. Finally, those who took the risk face the option luck outcome where they have a 10% chance of 30 and a 90% chance of gaining 2. "Equality of initial opportunity for advantage calls for equality in value of initial decisions-trees that each agent confronts" (Vallentyne, 2002). Therefore, each agent has the same initial chance to gain as any other individual, and therefore has an equal initial opportunity for welfare. So long as each individual has the same initial opportunities, then such a system is deemed just. Brute option luck on the other hand also requires compensation for inequalities in brute outcome luck¹⁸.

Vallentyne goes on to illustrate that 'justice does not require the equalization of brute outcome luck advantage' (Vallentyne, 2002, p. 23). The administrative costs for a scheme that also provides for brute outcome luck are likely to be significantly higher. Brute outcome luck should only be taken into account when it increases a person's initial opportunities. It may also have adverse effects on people's behaviors. For example, people could become more likely to take more risks. If the initial opportunity for advantage faced by each individual is valuable under the brute outcome luck compensation scheme, then justice would forbid such a scheme.

Essentially, initial opportunity egalitarians take an *ex ante* approach, whilst brute luck egalitarians take an *ex post* approach. An *ex post* approach is insensitive to the potential costs of imposing such equality. The costs of equality are factored in within a *ex ante* perspective. Vallentyne then tackles a

¹⁸ For example, the impact of the brute luck event where individuals have a 20% chance of receiving an outcome of 0 should be redistributed for.

second issue with initial opportunity egalitarianism: that all members of a supposedly better off group owe compensation to the less well-off group (Vallentyne, 2002). That means that even the small number of poor individuals within the better off group owe resources to those within the less well-off group, even those who are much better off. This seems incredibly counterintuitive. However Vallentyne makes clear that the idea that someone with a miserable life might owe something to someone with a wonderful life is also prevalent within brute outcome egalitarianism. More substantively, he argues that some compensation for brute outcome luck will generally be provided. For example, those who have been unlucky and lead miserable lives may be not required to provide compensation.

Finally, Vallentyne tackles the question of what should be done in the situation where new information arises that alters the chances that individuals have. For example:

‘equalization is provided between two children at the beginning of their lives, and it is later discovered that one of the children had a previously undetected genetic predisposition to a certain disease, it seems quite unjust not to provide compensation simply because we were initially unable to detect this disposition.’ (Vallentyne, 2002, p. 33)

In this situation it is clear that initial opportunity for advantage was not calculated effectively. Since the two were believed to be equal, but they have turned out to not have been, then the child in question is deserving of some compensation in order for the initial opportunity of the two to have been equal.

7.2 Criticisms of Vallentyne's redistribution of resources

As Vallentyne notes, his approach to redistribution is unpalatable for many, if not most, egalitarians. I will argue that such an approach is also unreasonably arbitrary in discerning which factors deserve to be equalized and when. As mentioned in the previous chapter, Vallentyne argues

that it is only fair for a child who has a previously un-noticed genetic condition that will affect his life be given extra compensation. Since information was not available at the time of redistribution of resources to ensure equality of initial opportunity compensation is used to make up for this.

However, as Brian Barry makes clear, Vallentyne's initial opportunity for welfare metric would support the formation of a caste system. The castes are decided upon by some 'equal opportunity randomizing device' (Vallentyne, 2002, p. 27), which each individual within society enters into. Each individual has the same initial brute luck opportunity to be in any caste. Such a system would be wholly inegalitarian, and would unfairly prejudice those unfortunate individuals who ended up in a lowly caste equivalent to the Dalits ('untouchables') within the Indian caste system. Since at the advent of the lottery each individual had the exact same opportunities and identical chances of entering into any caste initial opportunity for welfare egalitarianism does not require the redistribution of resources (Barry, 1988). Obviously, a brute outcome luck egalitarian would be unwilling to allow such a situation to arise, since it would inevitably create massive inequality for no reason other than brute luck. As each individual had an identical initial opportunity for welfare, there is no inherent reason why such a scheme could not exist in Vallentyne's framework. This highlights the significant problems of only equalizing initial opportunities, as subsequent brute luck events such as the caste lottery are deemed acceptable.

Vallentyne concedes that Barry has 'common sense intuition on his side' but attempts to refute his conclusion (Vallentyne, 2002, p. 27). He argues that caste systems are almost always unjust for a number of reasons, but that that it could be possible for there to be 'justice' within one. So long as there are no other forms of injustice going on, then such a system is supposedly acceptable. Vallentyne is however forced to concede that 'inequalities of social status are more likely to arise on initial opportunity egalitarianism' (Vallentyne, 2002, p. 27). Initial opportunity for welfare egalitarianism can therefore be seen to support a wholly inegalitarian system.

On discovering the genetic condition the child is suddenly able to claim compensation on the basis that that genetic defect should have been compensated for at the start. What then is stopping the person affected by the caste system from gaining the same compensation on the basis that neither she nor anyone else knew that she would be put into a lowly caste? Both afflictions are previously unknown things that affect the opportunities for wellbeing of individuals. However, Vallentyne argues that only conditions that are certainties after the start point should be redistributed for. For example, if it was definite that the woman would be placed into a lowly caste then resources would be redistributed to her. If though, she had an equal chance with everyone else of attaining a place in any of the other castes, and just happened to be unfortunate, then there is no inherent need to redistribute resources. Subsequent brute outcomes are largely irrelevant in terms of redistributing resources. To suggest that one should be compensated simply because an affliction was certain seems unreasonably arbitrary. The woman placed into a lowly caste has also been afflicted by something completely uncontrollable. Her life might be just as affected as the child with the genetic disorder, and yet her misfortune goes unaided.

7.3 Arbitrary nature of a starting point

Vallentyne realizes that he must answer the question: 'What point in a person's life counts as the "initial" point for the purposes of evaluating opportunities?' (Vallentyne, 2002, p. 18). He suggests two possible options for when the start point could be: the 'full moral standing view' put forwards by Richard Arneson which he disputes¹⁹, and the partial moral standing view. Though he leaves the question open, either starting point appears incredibly arbitrary. Why should bad brute luck that occurs to an individual be compensated when they are young, but not when they are older? Brute luck is unavoidable by definition, so why would moral standing affect society's responsibility to help individuals. This is a considerable challenge that Vallentyne himself notices (Vallentyne, 2002, p. 20).

¹⁹ The problem of 'sentient individuals not capable of rational agency' such as mentally impaired individuals would be left out if 'full moral standing' were taken as the prerequisite (Vallentyne, 2002, p. 19)

He argues that equalizing initial opportunities:

'It does not draw the line between what happens before the initial point and what happens after. Rather, it assesses the chances for advantage relative to that initial point. If at that point there is a 100% chance that a bad brute luck event will happen some 20 years later, the evaluation of the opportunity set will fully reflect the occurrence of that event. Thus, if one individual faces such an event and an otherwise identically situated agent does not, then initial opportunity egalitarianism requires that full compensation be given to the first individual.' (Vallentyne, 2002, p. 20)

Vallentyne thus asserts that the line is not arbitrary since events that take place after the 'start' can still often be redistributed for. Cases such as the genetic condition, where an individual has a 100% chance of having a condition means that the initial redistribution of opportunities was insufficient. For Vallentyne, such a situation therefore shows that there is not such an arbitrary line as might be suspected.

This is however not the case. Later events or situations that arise can be redistributed for, but only on the condition that there is a '100% chance that a bad brute luck event will happen'. In the genetic condition case redistribution is needed because there is an unknown 100% chance of the individual having the affliction. Out of two people (A and B) , if A were to later develop a debilitating genetic condition then it would need to be redistributed for. Their initial opportunity for developing the affliction would have been unequal, and so to satisfy Vallentyne's 'initial opportunity for advantage' metric redistribution is needed. This is done to compensate for the initial inequality between A and B's positions.

Alternatively though, if each individual still had an equal opportunity of being afflicted by bad brute luck, then there is no longer a need to backdate redistribution. For example, if A and B have an equal initial opportunity of getting struck by lightning over the course of their lifetimes, say 50%, then

according to Vallentyne the situation is different. This event would count as 'brute outcome luck'. Since each individual began with an equal opportunity for welfare, with the same chance of getting struck by lightning, there is therefore no need to redistribute to compensate for brute outcomes. Since each has the same initial opportunity Vallentyne would suggest that subsequent redistribution is not necessarily required. In the earlier example, each person had an exactly equal initial chance of being struck by lightning, thus the situation was fair. The fact that someone then is struck by lightning is unfortunate, but not necessarily worthy of redistribution according to Vallentyne.

The question of an arbitrary starting point is therefore still an important one. Imagine that the aforementioned woman who is struck by lightning had the misfortune to have been struck by lightning as a child as well. However, this was before she had developed the 'partial moral standing' that Vallentyne deems the cut-off point. The effects of the lightning strike might have been essentially the same in both instances, and affected her just as greatly, if not more when she was older. It is therefore strangely arbitrary to suggest a cut-off point whereafter individuals will no longer receive societal assistance for the problems caused by bad brute luck. Given that bad brute luck is not the result of rational or irrational action, then why should rational agency be relevant in determining when someone deserves compensation? The woman struck by lightning is in just as much need as she was when struck as a child. The situation was just as unavoidable, and so the dedication of an "initial point" is questionable. This appears wholly unsatisfactory from an egalitarian point of view. It is discriminatory against those of at least 'partial moral standing', without there being any justifiable reason for doing so. Having moral standing in no way necessarily enables an individual to overcome brute luck in a satisfactory way.

Finally, I will return to the lightning example to illustrate the potential loss of effective autonomy in such a framework. If struck I would be rendered largely helpless, with my 'initial opportunity for welfare' having literally gone up in smoke. With a drastically reduced opportunity for welfare, my situation would be similar to that of that landless within Nozick's entitlement theory. Cohen's

criticism of the 'merely formal' self-ownership that would be created, is relevant to a critique of Vallentyne. Though officially a 'self-owner' I would be forced to work for someone else, and give up some of my rights of self-ownership²⁰. My rights to control my life would remain in place, but these rights would be subjugated by the need to attain enough resources to survive. Failing to compensate for brute outcome luck would thus hinder the 'effective autonomy' of individuals. I would, without some form of assistance from society, not be able to have autonomous control over my actions. Thus self-ownership, if thought of as something more than formal, would be significantly hindered in such a scenario. This is of consequence for Vallentyne because his theory of justice depends on the redistribution of resources giving individuals the 'robustness' of self-ownership that they would otherwise lack (Vallentyne, 2009). Removing the redistribution of resources from certain individuals prevents them from attaining the more than formal form of self-ownership that he appears to support.

7.4 Otsuka on redistribution

Michael Otsuka's approach to redistribution of resources is very different. Whilst Vallentyne's argument justified why not all forms of brute luck should be compensated for, Otsuka's is instead justifying why only option luck should be left uncompensated (Otsuka, 2009a). Here then the divergent scale of redistribution can be clearly witnessed. Michael Otsuka's redistribution of resources will be shown to be both more egalitarian, and also to offer greater autonomy to individuals.

'Extreme luck egalitarianism' asserts that the state has a duty to eliminate all unchosen disadvantage, and that this can never be overridden (Otsuka, 2006a, p. 165). This view is unacceptable to any libertarian as it would severely impede an individual's rights to self-ownership. Otsuka argues that he is a 'moderate luck egalitarian'. In this sense he is similar to the likes of Cohen and Dworkin. He

²⁰ This argument forms the basis of the socialist rejection of capitalism

accepts that there are instances in which one must 'acknowledges that this reason may be overridden by conflicting reasons that tell against such elimination' (Otsuka, 2006a, p. 165). Gosseries, amongst others, has argued that left-libertarianism and luck egalitarianism are incompatible (Gosseries, 2006). Otsuka succinctly condenses Gosseries' argument thus:

'It is a premise of left-libertarianism that the state may not take more from the talented by virtue of their superior talents and his related claim that left-libertarians will want to avoid the taxation of the fruits of people's labour in order to preserve self-ownership' (Otsuka, 2006a, p. 166)

However, a right of self-ownership does not in itself necessarily imply any unfettered right over natural resources. Therefore a tax on natural resources can be justified. Instead, luck egalitarianism, as a method of equalizing unchosen differences, can be basically viewed as 'equality of opportunity for advantage'. This in itself is intrinsically similar to left-libertarians like Otsuka who seek equality of opportunity for welfare. The left-libertarian project can thus be viewed as fundamentally compatible with 'moderate luck egalitarianism'. Such moderation is not a weakening per se, since 'extreme' luck egalitarianism would be completely unsupportable²¹.

Otsuka proposes an alternative 'revised argument for the unfairness of brute (but not of option) moral luck':

- 'P1. A person is blameworthy only if others would be justified in reproaching him, where such reprobation is a sanction.
- P2*. Being a sanction, such reprobation is subject to a requirement of fairness that allows for the imposition of a sanction only if it was possible for the sanctioned individual to avoid being sanctioned altogether.

²¹ There is little to no support for extreme luck egalitarianism from contemporary philosophers

- Therefore, a person is blameworthy only if it was possible for him to avoid being sanctioned altogether.' (Otsuka, 2009a)

Otsuka thus makes it clear that option moral luck should be permitted. In cases of 'unavoidable blameworthiness' then fairness requires that compensation be given. If an individual could not reasonably be blamed for causing the event, then Otsuka would argue that it must be compensated for. However, if a situation was avoidable, and yet an individual chose to take that course of action should not necessarily be compensated. An individual with sufficient control over the situation to be able to wholly avoid the eventual outcome would thus not receive assistance, since the eventual outcome was 'optional'. Bad 'brute' luck is compensated, whilst bad option luck is not. He put forwards the 'Principle of Avoidable Blame'. In this Otsuka argued that 'One is blameworthy for performing an act of a given type only if one could instead have behaved in a manner for which one would have been entirely blameless' (Otsuka, 1998a, p. 250). Here then an individual can only be held accountable for her actions if she has adequate knowledge of the situation, and a reasonable opportunity to avoid it entirely. Such unavoidable actions should always be compensated for. In stark contrast to Vallentyne, Otsuka therefore supports compensating for all forms of brute luck. In this regard he offers a much more egalitarian solution.

To return to the lightning example, this time using Otsuka's redistributive framework. The situation was unavoidable, given the sudden onset of the storm, and the lack of warning that the woman received. According to Otsuka she therefore could not reasonably have avoided the bad luck that beset her. Therefore it is just that society should assist her and ensure that she is able to return to an 'equal opportunity for welfare' with everyone else. Otsuka's redistribution of resources is therefore more egalitarian than Vallentyne's. Rather than simply ensuring that individuals have an equal initial opportunity for welfare, Otsuka ensures that all unavoidable 'brute' luck events are compensated for. Although Otsuka's dedication to an egalitarian distribution of resources is, he argues, just as strong as Dworkin or Cohen's. The same cannot be said for Vallentyne.

Just as Vallentyne's restrictions upon redistribution hinder the autonomy of individual self-owners, Otsuka's 'moderate luck egalitarianism' ensures greater autonomy. As self-owners individuals are allowed to make choices that negatively affect their property and wellbeing. This involves 'option luck' which Otsuka follows Dworkin in allowing. However, since Otsuka ensures that no individual will be negatively affected by a situation that is bad 'brute' luck the autonomy of the individual can be maintained. By being compensated for 'brute' luck, individuals who are affected are able to maintain their autonomous ability to control their own lives. They can therefore ensure that their self-ownership is more than 'merely formal'. Overall, in terms of the redistribution of resources Otsuka's approach appears both more egalitarian and promotes individual autonomy to a greater degree. Peter Vallentyne justifies his movement away from brute luck egalitarianism by claiming that justice does not require it. However, from an egalitarian point of view the outcome of his 'equality for initial opportunity' is unacceptable. Furthermore, by looking at Cohen's criticism of Nozick and the 'merely formal' self-ownership present Vallentyne's argument can be seen to lack effective autonomy as well. Therefore in terms of offering an acceptable egalitarian solution, and also a solution that offers more than a formal self-ownership, Michael Otsuka's redistribution is superior in terms of offering an equitable redistribution of resources that does not suffer from the sizeable flaws that plague Vallentyne.

8 Conclusion

I began this thesis by asking whether it was possible to 'have your cake and eat it too'. First I set out Robert Nozick's problems with such a reconciliation, then Cohen's numerous critiques. This thesis has addressed the approaches to 'having your cake and eat it too' promoted by Peter Vallentyne and Michael Otsuka. The conclusion is that the best way in terms of self-ownership and equality, comes from Michael Otsuka, particularly within his Libertarianism without Inequality.

Peter Vallentyne and Michael Otsuka offer two very different conceptions of a reconciliation of self-ownership and autonomy on the basis of an equal opportunity for welfare. Though Otsuka's reconciliation is, I have argued, superior, there are a great many similarities between the two which have been necessarily overlooked for the purposes of this essay. It is important to accept that Vallentyne's equal opportunity for welfare approach is similar in a great many ways to Michael Otsuka's. That said, Otsuka's approach offers greater individual autonomy via a more robust self-ownership, and a more egalitarian approach.

The differences between Michael Otsuka and Peter Vallentyne shown in this thesis are by no means an exhaustive list. Inevitably covering all differences between the two authors within this thesis would have been an impossibility. Instead, the key and consequential differences have been addressed here. These show that although, inevitably there are innumerable other differences between the two which it was not possible to cover, Otsuka particularly has a superior approach to reconciling the competing factors.

I have examined self-ownership, world ownership, the egalitarian proviso, taxation and redistribution. In each instance, problems can be identified with Vallentyne's approach. In each situation Michael Otsuka's approach has better overcome those challenges. This is not to say that I have offered a complete defence of left-libertarianism. Instead I aim to have illustrated that Otsuka's reconciliation is a viable option, and the most usable version of left-libertarianism yet produced. I also highlight how the standard critiques of left-libertarianism that apply to Vallentyne, Steiner et al, may not necessarily apply to Otsuka. Left-libertarianism still faces many questions from both right-libertarians and egalitarians alike. Barbara Freid's claim that left-libertarianism is a meaningless exercise, that represents an egalitarian submission to right wing libertarians has hopefully been at least partially refuted in the process (Fried, 2004). This thesis demonstrates that left-libertarianism is a viable and workable field of inquiry. Otsuka in particular shows how self-ownership can be granted importance without devaluing egalitarianism, and that the self-ownership that arises is, if anything more

meaningful than that afforded to individuals by Robert Nozick. By following G.A. Cohen closely and building upon his work Otsuka has been able to avoid some of the problems that face Vallentyne, and which, as yet, he has been unable to overcome adequately. In particular, Vallentyne faces many of the same problems with a 'merely formal' form of self-ownership for which Cohen criticizes Nozick and joint ownership left-libertarians.

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